

ORIGINALDecision No. 58272

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of SOUZA'S MILK TRANSPORTATION
CO., a California corporation, to depart
from direction of this Commission
directing collection of undercharges.

Application No. 40343

Francis X. Vieira, for applicant.William C. Bricca and Robert A. Lane, for the
Commission staff.O P I N I O N

On August 12, 1958, Souza's Milk Transportation Company, a corporation, filed an application wherein it asked for an order permitting the applicant to depart from the requirements of an informal Commission undercharge letter dated April 11, 1958. In effect, this application requests an order of the Commission authorizing the applicant to waive and not assess certain charges for the transportation by it as a highway common carrier, of the commodity whey, during the period October 1, 1957 through January 31, 1958.

A public hearing was held on November 20, 1958, before Examiner William L. Cole, at Merced, at which time the matter was taken under submission.

The evidence introduced at this hearing shows that the respondent operates as a highway common carrier and as a highway permit carrier. Applicant's certificate as a highway common carrier authorizes it to transport dairy products in bulk, including whey, between various points in the San Joaquin Valley. During the

period from October, 1957 through January, 1958, the applicant or its predecessor, Manuel B. Souza, doing business as Souza's Milk Transportation, transported certain shipments of whey between Los Banos and Gustine. During January, 1958, the applicant also transported three shipments of whey between Visalia and Gustine which are involved in the present application.

During the period of time these shipments between Los Banos and Gustine were transported, the tariff of the applicant and its predecessor showed a commodity rate of $6\frac{1}{2}$ cents per hundred pounds for the transportation of a minimum weight of 31,000 pounds of milk, cream, buttermilk, or whey between Gustine and Los Banos. The evidence showed that the individual shipments in question between Los Banos and Gustine were for less than this minimum weight of 31,000 pounds but that the applicant or its predecessor applied the $6\frac{1}{2}$ cent rate. The evidence showed that during any given day, the applicant transported well over 31,000 pounds of whey between the two points, and the office manager of the applicant testified that he erroneously understood that the minimum weight in the tariff was computed on the basis of the total amount of whey transported between the points during the entire day.

The evidence also showed that the Commission has never established a minimum rate on whey in tank trucks. Prior to the time applicant's predecessor became certificated and while he was operating as a highway permit carrier, he transported whey for years between Los Banos and Gustine at the rate of $6\frac{1}{2}$ cents per hundred pounds, regardless of the weight transported. The evidence also showed that during the period of time in question, other highway permit carriers were transporting whey in this area at $6\frac{1}{2}$ cents per hundred pounds on an any-quantity basis.

In the early part of 1958, members of the Commission staff investigated applicant's records, noted the discrepancies, and on April 11, 1958, an informal undercharge letter was mailed. When it was first called to the applicant's attention that the charges actually assessed were lower than the charges prescribed in its tariff, the applicant immediately amended its tariff for the transportation of whey between Los Banos and Gustine to reflect the lower charges that were actually assessed.

Based upon all the facts in the record, the Commission is of the opinion and finds that the rate of $6\frac{1}{2}$ cents per 100 pounds, minimum weight 31,000 pounds, named in the tariff of applicant and its predecessor and in effect during the period from October 1, 1957 to January 31, 1958, inclusive, was unjust and unreasonable for application to the particular traffic involved in this application between Los Banos and Gustine to the extent it exceeded a rate of $6\frac{1}{2}$ cents per 100 pounds without a minimum weight per shipment. Under the specific circumstances in this proceeding, Souza's Milk Transportation Company will be authorized to waive the application of its tariff rates to the shipments in question between Los Banos and Gustine to the extent such rates exceed a rate of $6\frac{1}{2}$ cents per 100 pounds.

With respect to the three shipments of whey between Visalia and Gustine, the evidence showed that during the period of time in question the applicant's tariff provided for a rate of $15\frac{1}{2}$ cents per hundred pounds on a minimum weight of 40,000 pounds. The applicant assessed a rate of $15\frac{1}{2}$ cents per hundred pounds on a weight of less than 40,000 pounds. This resulted in charges totaling \$12.32 less than the applicable tariff charges. It is to be noted that the evidence showed that the applicant has not amended its

tariff with respect to the transportation of whey between these two points. It is the Commission's conclusion and it so finds that the evidence presently in the record will not support a finding that this rate between Visalia and Gustine is unreasonable.

O R D E R

A public hearing having been held in the above entitled matter and the Commission being fully informed therein, now therefore,

IT IS ORDERED that Souza's Milk Transportation Company, a corporation, is authorized to waive the assessment of the rates named in its or its predecessor's tariff on file and in effect from October 1, 1957 to January 31, 1958, inclusive, to the shipments of whey transported by it between Los Banos and Gustine to the extent such rates exceed 6½ cents per 100 pounds.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 14th day of April, 1959.

E. Lynn Fox
President

W. L. ...

W. ...

Theodore ...

W. ...
Commissioners